

RULE REVIEW CHECKLIST

Notice of Intent published in Indiana Register IC 4-22-2-23

YES NO Was it published at least 28 days before proposed rule was published?

YES NO Did it include an overview of intent and scope of rule?

YES NO Did it include the statutory authority for the rule?

YES NO Was the small business regulatory coordinator identified with name, address, telephone number, and electronic mail address? IC 4-22-2-28.1(e)

YES NO Was the small business ombudsman designated under IC 4-4-35-8 identified with name, address, telephone number, and electronic mail address and is there a statement of resources available to regulated entities through the small business ombudsman? IC 4-22-2-28.1e)

Newspaper notice IC 4-22-2-24

YES NO Was it published in a newspaper of general circulation in Marion County?

YES NO Was it published at least 21 days before public hearing?

YES NO Did the notice include the date, time and place of public hearing?

YES NO Did the notice include a general description of subject matter (though statute is forgiving if “inadequate or insufficient”)?

YES NO Did notice include a statement justifying any requirement or cost not expressly required by statute or cost with reference to data, studies, or analyses (when required by subsection (d)(3)) here also statute is forgiving if “inadequate or insufficient”)?

YES NO Did notice include an explanation that the proposed rule and any referenced data, studies or analyses (see above) may be inspected and copied at agency’s office?

YES NO Was an authorization to proceed obtained? IC 4-22-2-24(b) and (g)

Proposed rule published in Indiana Register IC 4-22-2-24

YES NO Did it appear in the Indiana Register at least 21 days before public hearing?

YES NO Did the notice include the date, time and place of public hearing?

YES NO Did the notice include a general description of subject matter (though statute is forgiving if “inadequate or insufficient”)?

YES NO Did notice include a statement justifying any requirement or cost not expressly required by statute or cost with reference to data, studies, or analyses (when required by subsection (d)(3)) here also statute is forgiving if “inadequate or insufficient”)?

YES NO Did notice include an explanation that the proposed rule and any referenced data, studies or analyses (see above) may be inspected and copied at agency’s office?

YES NO Was the full text published (except for full text of incorporated by reference materials)?

YES NO Was any statement required by IC 4-22-2.1-5 published (small business fiscal impact)?

Small Business requirements under IC 4-22-2.1

YES NO Are requirements or costs imposed on small businesses? (“Small business is defined in IC 4-22-2.1-4 which references IC 5-28-2-6 definition.) If no, then additional inquiry not required. If yes, then below applies. However, this requirement does not apply to two boards associated with IDEM and several boards associated with the Department of Homeland Security

YES NO Was a statement of annual economic impact prepared that meets the content requirements of IC 4-22-2.1-2-5? (The requirements are detailed.)

YES NO Was the statement of annual economic impact published in Indiana Register with proposed rule? IC 4-22-2.1-5(c) (1)

YES NO Was the statement of annual economic impact delivered to the small business ombudsman not later than date of Register publication? IC 4-22-2.1-5(c) (2)

YES NO Were the proposed rule and economic impact statement reviewed and written comments submitted by the small business ombudsman? Were the written comments not later than seven days before date of public hearing? IC 4-22-2.1-6

YES NO Did the agency make the small business ombudsman written comments available for public inspection under IC 5-14-3, on website, and for distribution at public hearing?

YES NO Did the agency respond in writing to small business ombudsman comments before adopting rule? IC 4-22-2-28(b)

One year deadline IC 4-22-2-25

YES NO Can it still be approved or deemed approved by governor within one year of publication of notice of intent?

YES NO Exception to above, notice to the Publisher (LSA) before 250th day after notice of intent publication reasons why rule was not adopted and expected date rule will be completed with expected date rule will be approved by Governor. Were the requirements met for this self-granted exception?

Public Hearing IC 4-22-2-26

YES NO Was public hearing convened at date, time and place stated in notices?

YES NO Was there adequate opportunity for any person to comment?

YES NO If public hearing was recessed and reconvened, was it done as required by IC 4-22-2-26(d)?

Consideration of Public Hearing Comments

YES NO Did individual or group of individuals (board) which adopted the rule consider public hearing comments? Or otherwise stated: did that individual or individuals either attend the public hearing or review a written record or summary of the public hearing?

\$500,000 economic impact IC 4-22-2-28(c) to (h)

YES NO As described in statute, does rule have over a \$500,000 annual economic impact on all regulated persons (beginning with the first 12 month period after rule is fully implemented)?

YES NO If so, did agency submit data and assumptions to OMB and did OMB prepare fiscal impact statement?

YES NO Was procedure to be followed by agency and OMB as detailed in subsections (c) and (d) (subsections (c) and (e) for IDEM) followed?

YES NO Was Legislative Council sent \$500,000 impact material in electronic format at same time it was sent to OMB?

Material to be sent to Legislative Council. IC 4-22-2-28(i)

YES NO Did the agency provide to the Legislative Council in electronic format any economic impact or fiscal impact statement, including any supporting data, studies or analysis, prepared by the agency to comply with IC 4-22-2-19.5 (regarding requirement to minimize the expenses to regulated entities for rule compliance, IC 4-22-2-24 (hearing notice justification statement), IC 4-22-2.1-5 (small business economic impact statement), IC 4-22-2.5-3.1 (rule readoption small business “update”), IC 13-14-9-3 and IC 13-14-9-4

environmental rules fiscal impact or alternatives, and any other requirements under any other law to conduct an analysis of the cost, economic impact statement, or fiscal impact so a rule.

Changes in rule between proposed rule and final rule IC 4-22-2-29

YES NO Are the changes acceptable under the substantial difference test as detailed in IC 4-22-2-32(b)?

YES NO Or alternatively, does it pass the logical outgrowth test by being a logical outgrowth of the proposed rule as supported by written comments submitted during the public comment period or by the small business ombudsman under IC 4-22-2.1-6(a)?

Beginning of rulemaking process. IC 4-22-2-19

YES NO Did rulemaking process begin not later than sixty days after effective date of statute authorizing the rule? IC 4-22-2-19(c)

YES NO If not, as is frequently the case, does at least one of the exceptions under IC 4-22-2-19(a) apply?

YES NO If no to both the above, was the appropriate notice sent to the Publisher (LSA) explaining not meeting the sixty day requirement?

Incorporations by reference IC 4-22-2-21

YES NO Are any documents incorporated by reference into the rule? IC 4-22-2-21(a). In considering this it is necessary to determine whether there might be one or more that agency did not treat as such.

YES NO Incorporated by reference matters “fully and exactly described”? (So reader is adequately informed as to the identity of the document—less is required for documents that are incorporated within incorporated document.)

YES NO Unless previously filed with Secretary of State before July 1, 2006, or the publisher (LSA) after June 30, 2006 (or another exception applies) are all incorporated documents included separately from the Indiana Administrative Code rule text and from the Supporting Documentation? (Document may be submitted in paper or electronic format—latter needs to be on CD to be workable.)

Rulemaking Docket IC 4-22-2-22.5

YES NO Was there a rulemaking docket maintained on the agency’s website as stated in IC 4-22-2-22.5(e) (required from publication of notice of intent or similar environmental rulemaking commencement until the effective date of the rule)?

YES NO Did/Does the rulemaking docket state or contain, as specified in IC 4-22-2-22.5, the subject matter of the proposed rule, notices related to the proposed or links to the notices in the Indiana Register, how comments may be made, time within which

comments may be made, where comments and agency response to comments may be inspected, the date, time and place of a public hearing, a description of scientific and technical findings related to the proposed rule (if applicable), a reasonable estimate of the timetable for action, updated periodically as circumstances change, if necessary.

Rule Packet

YES NO Did agency submit an appropriate rule packet? All documents in packet must adequately identify agency and LSA Document.

YES NO Is the rule on a CD that has a label or writing identifying the agency and LSA document number with the rule in proper format (showing new language in bold, eliminated language with strike throughs, retained language in regular type and repealed sections and (other than 30 days after filing) effective dates in separate SECTIONS and otherwise properly formatted—including digest, section titles, authority, affected and history lines.

YES NO Was proper Supporting Documentation included separately labeled as such? Does it include necessary information to evaluate rule? Although more is often included and welcome, this must include proof of newspaper hearing notice, transcript or summary of public hearing including sufficient information to establish that hearing held at time and place consistent with notices, written comments submitted during rulemaking process, list of changes between proposed rule and finally adopted rule, moratorium exception letter, transmittals to OMB/Budget, Budget Approval letter (under 1989 executive order which also reflects OMB review), the authorization to proceed, copy of transmittal emails to Legislative Council, and copy of rulemaking docket.

Statutory authority for rule

YES NO Is there statutory authority for the rule?

Review rule for content (IAC rule text and incorporated by reference documents)

YES NO Are there any federal or state constitutional issues?

YES NO Is content consistent with statute? Typically state statute but in some situations federal statute as well.

YES NO Is rule formatted as required by rule drafting manual? However, see IC 4-22-2-44's last sentence.

YES NO Is the rule "clear, concise, and easy to interpret and to apply"? IC 4-22-2-20(a)(1). This is a general performance standard but rules certainly can fall short of it.

YES NO Does the rule meet standards for rulemaking found in IC 4-22-2-19.5? This is also a general performance standard but a potential shortcoming in given situations.

YES NO Does the rule conflict with other rules?

Miscellaneous issues

YES NO Were rule promulgation requirements unique to agency complied with? These sometimes include recommendations or approval by some board in addition to the rule being adopted by the board or individual with rulemaking authority, additional hearings or timing of hearings, etc.

YES NO Are there any issues concerning compliance with open door, including electronic meeting requirements (when applicable) and with public record requirements? IC 4-22-2-17?

YES NO Was rule adopted in compliance with quorum requirements and minimum number of affirmative votes requirements that may exist for a board?

YES NO Are there any other factors unique to this rulemaking that need to be considered?

YES NO Was a rulemaking moratorium exception obtained from OMB (unless not required because a separately elected official)?

YES NO Was the appropriate review and approval (a function on the cost benefit analysis) obtained from OMB?